

NANCY A. DELKITTIE

IBLA 78-100

Decided June 23, 1978

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting application for trustee deed to townsite lot No. 2564 (932), Nondalton Townsite, U.S. Survey 4876.

Vacated and remanded.

1. Alaska: Townsites -- Regulations: Applicability

To the extent that the provisions of the non-Native townsite law do not vitiate the purposes of provisions of the Alaska Native townsite law, the provisions of the non-Native townsite regulations may be applied in the disposition of Native townsite lands.

2. Alaska: Townsites

The person or persons who may be awarded a deed to a lot in a townsite are those individuals who occupied the lot on the date of final subdivisional survey or were entitled to such occupancy, or their assigns thereafter.

3. Alaska: Townsites

Where there are conflicting claimants to lots in a Native townsite and the record does not clearly reflect who occupied or who was entitled to occupancy of the lots of the date of final subdivisional survey, the matter will be remanded for clarification.

APPEARANCES: Joe P. Josephson and Nancy R. Gordon, Esqs., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On or around April 13, 1977, Nancy A. and Ricky D. Delkittie filed a Native Indian or Eskimo of Alaska Trustee Deed Application for Lot No. 1, Block No. 7, Tract "H," U.S. Survey No. 4876, in Nondalton, Alaska. This application was made pursuant to the Act of May 25, 1926, 44 Stat. 629, 43 U.S.C. § 733 (repealed October 21, 1976, by section 703(a), Federal Land Policy Management Act (FLPMA), 43 U.S.C.A. § 1701 note (West Supp. 1977)). On September 16, 1977, Frances T. Thiele filed a similar application for this lot. On September 30, 1977, the Alaska State Office, Bureau of Land Management (BLM), issued a decision rejecting the Delkitties' application, because they were ineligible for a deed, as their occupancy commenced in 1970, after the approval date of the survey of the lot. The decision provided that a restrictive deed would issue instead to Frances T. Thiele. Nancy A. Delkittie (appellant) alone has filed a notice of appeal of this decision.

[1, 2] There are no specific sections dealing with the disposal of lots in the regulations governing Native townsites. However, the Board has held that the provisions of the non-Native Alaska townsite regulations, to the extent that they do not vitiate the purposes or provisions of the Alaska Native townsite law, may be applied in the disposition of Native townsite lands. Leona R. Strang, 26 IBLA 144, 148 (1976); City of Klawock v. Andrew, 24 IBLA 85, 90 (1976). Here, as in Strang and City of Klawock, it is appropriate to apply, as a matter of policy, the requirement set out in 43 CFR 2565.3(c) that "[o]nly those who were occupants of lots or entitled to such occupancy at the date of approval of final subdivisional town site survey or their assigns thereafter, are entitled to the allotments herein provided." The subdivisional plat of survey of lot No. 1 was apparently approved on January 17, 1969.

[3] It is impossible from the present record to determine how BLM arrived at its conclusion that Thiele, rather than appellant, met the requirements of the regulations on this date. Accordingly, we must vacate the decision and remand the matter for clarification.

If BLM regards Thiele as the "occupant" of the lot as of January 17, 1969, it must specify exactly what actions by her constituted this occupancy. It should also consider whether appellant established occupancy prior to January 17, 1969, and make express findings on this question in its decision.

Alternatively, if BLM concludes that Thiele should receive the lot because she is the person or the assign of the person "entitled to * * * occupancy" thereof as of January 17, 1969, it must set out the basis for this conclusion. Thiele asserted in her application that she is the assignee of an alleged longstanding interest in this lot, which comes from her grandparents (who, according to appellant, were named Hopson). ^{1/} Thiele showed that she is the sole successor to her mother's (Frances Wilson's) interest in the lot, if any, by filing a copy of a quitclaim deed to the lot from Wilson to her. However, the record does not disclose whether Frances Wilson was in turn the sole successor of the Hopsons' rights, if any, to the lot. By this deed, Thiele received only whatever interest Wilson actually held in the lot, and it is not clear whether Wilson received in toto whatever interest the Hopsons had. BLM should clarify the record on these matters if its decision relies on Thiele's entitlement to occupancy.

Appellant has suggested that she, through inheritance, is a successor to the Hopsons' supposed interests in this lot, as Tadiana Hopson was also her great grandmother. In the absence of a documented transfer of the Hopsons' rights, if any, in lot No. 1, exclusively to Frances Wilson, it is possible that appellant's maternal grandparent (who is unnamed by appellant), as the Hopsons' child, would also have received at least a partial interest in the Hopsons' rights to the lot, and that appellant might have succeeded to this partial interest. If BLM's award of the lot rests on an entitlement traced back to the Hopsons' interest in the lot, it should determine the nature of that interest, if any, complete the family tree, establish who has succeeded to these rights, and issue a decision distributing the lot accordingly.

Appellant has submitted information indicating that she has occupied and improved the lot since 1972, by moving a house there and building other structures on it. We note that appellant may not benefit from having done so, as the sole issue here is occupancy or entitlement to occupancy of the lot as of January 17, 1969. As these improvements followed this date, they do not aid appellant's claim to the lot.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

^{1/} For clarification of the familial relationships here, please refer to the family tree, as described by appellant in her statement of reasons, attached as an appendix.

decision appealed from is vacated and remanded for action consistent herewith.

Edward W. Stuebing
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge

APPENDIX

TUDIANA HOPSON

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FRANCES WILSON

FRANCIS THIELE

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"X"

BETTY AGONY

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NANCY DELKITTIE

